

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7117 of 1987

For Approval and Signature:

Hon'ble MR.JUSTICE A.N.DIVECHA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? No
2. To be referred to the Reporter or not? No

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3. Whether Their Lordships wish to see the fair copy of the judgement? No
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No
5. Whether it is to be circulated to the Civil Judge? No

CHHOTALAL A. PAREIKH

..Pet.(s)

Versus

STATE OF GUJARAT

..Resp.(s)

Appearance:

Shri N.K.Pahwa, Advocate, for Shri P.M.Thakkar, Advocate for the Petitioner.

Shri A.G.Uraizee, Assistant Government Pleader, for the Respondents.

CORAM : MR.JUSTICE A.N.DIVECHA

Date of decision: 23/02/96

ORAL JUDGEMENT

The order passed by the Competent Authority at Rajkot (respondent No.3 herein) on 27th February 1984 under section 8

(4) of the Urban Land (Ceiling and Regulation) Act, 1976 (the Act for brief) as affirmed in appeal by the order passed by the Urban Land Tribunal at Ahmedabad (respondent No.2 herein) on 11th September 1987 in Appeal No.Rajkot-755 of 1984 is under challenge in this petition under Articles 226 and 227 of the Constitution of India. By his impugned order, respondent No.3 declared the holding of the petitioner to be in excess of the ceiling limit by 9123 square metres.

2. The facts giving rise to this petition move in a narrow compass. The petitioner filed his declaration in the prescribed form under section 6 (1) of the Act. It was duly processed by respondent No.3. After observing necessary formalities under section 8 of the Act, by his order passed on 27th February 1984 under section 8 (4) thereof, respondent No.3 declared the holding of the petitioner to be in excess of the ceiling limit by 9123 square metres. Its copy is at Annexure-A to this petition. The aggrieved petitioner carried the matter in appeal before respondent No.2 under section 33 of the Act. A copy of the memo of appeal is at Annexure-B to this petition. It came to be registered as Appeal No.Rajkot-755 of 1984. By the order passed on 11th September 1987 in the aforesaid appeal, respondent No.2 dismissed it. Its copy is at Annexure-C to this petition. It appears that soon thereafter a notification under section 10 (3) of the Act came to be issued on 19th September 1987 followed by the notice under section 10 (5) thereof issued on 17th November 1987. Its copy is at Annexure-D to this petition. The aggrieved petitioner has thereupon approached this court by means of this petition under Articles 226 and 227 of the Constitution of India for questioning the correctness of the order at Annexure-A to this petition as affirmed in appeal by the appellate order at Annexure-C to this petition and consequential actions including the notice at Annexure-D to this petition issued on 17th November 1987.

3. It appears that the petitioner raised several points in the memo of appeal. They have been stated by respondent No.2 while summarising the contentions raised in the memo of appeal. In fact, those contentions have been converted into the points for determination. Despite that position, respondent No.2 has taken into consideration only one point regarding pendency of the application for exemption under section 20 of the Act and has disposed of the appeal only on that point.

4. It is difficult to accept the submission urged before me by learned Assistant Government Pleader Shri Uraizee for the respondents that at the time of hearing only that point was pressed into service. It appears that the point dealt with by respondent No.2 in the appellate order at Annexure-C

to this petition appears to be the main argument. It would not mean that other contentions were given up by or on behalf of the petitioner - appellant at the time of hearing of the appeal in question. There is no statement made in the appellate order that no other points were canvassed or other contentions were given up. In that view of the matter, it is difficult to accept the submission urged before me by learned Assistant Government Pleader Shri Uraizee for the respondents that the appeal was decided only on the point urged before respondent No.2.

5. Since as many as four points for determination were framed and since the appeal has been disposed of only on the ground of pendency or otherwise of the application for exemption under section 20 of the Act, the appellate order at Annexure-C to this petition can be said to be suffering from the vice of non-application of mind on the part of respondent No.2 with respect to the points for determination framed by it. Such an appellate order cannot be sustained in law. It has to be quashed and set aside. The matter will have to be remanded to respondent No.2 for restoration of the appeal to file and for its fresh decision according to law by dealing with all the points for determination.

6. In the result, this petition is accepted to the aforesaid extent. The order passed by the Urban Land Tribunal at Ahmedabad (respondent No.2 herein) on 11th September 1987 in Appeal No.Rajkot-755 of 1984 at Annexure-C to this petition is quashed and set aside. All consequential actions/orders pursuant thereto are also quashed and set aside. The matter is remanded to respondent No.2 for restoration of the appeal to file and for its fresh decision according to law in the light of this judgment of mine. Rule is accordingly made absolute to the aforesaid extent with no order as to costs.

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